

FILED
JAN 11 2012
WILLIAM B. GUTHRIE
Clark, U.S. District Court
By Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

LISA LANEIL LAWSON-SIRMON)	
)	
Plaintiff,)	Case No. <u>CIV 12 - 015 - JHP</u>
)	
v.)	Removal from the District Court
)	of Haskell County, Oklahoma
AMERICAN INCOME LIFE)	
INSURANCE COMPANY)	Case No. CV-11-38
)	
Defendant.)	

NOTICE OF REMOVAL
28 U.S.C. § 1441

TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA:

Defendant American Income Life Insurance Company ("American Income"), through its undersigned attorneys, Fellers, Snider, Blankenship, Bailey & Tippens, P.C., and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 hereby removes and gives notice of removal of this action to this Court, the judicial district in which the action is pending. As grounds for removal, American Income states as follows:

NATURE OF THE ACTION

1. Plaintiff Lisa Laneil Lawson-Sirmon ("Plaintiff") commenced this action pursuant to Title 12, Section 2003 of the Oklahoma Pleading Code on December 13, 2011 with a copy of the Summons and Petition ("Process"), true and correct copies of which are attached hereto as Exhibits 1 and 2, respectively. The action is pending before the

District Court in and for Haskell County, State of Oklahoma ("District Court"). An up-to-date and certified copy of the docket sheet is attached as Exhibit 3.

2. Plaintiff alleges she has suffered damages stemming from American Income's denial of life insurance benefits for her husband, John Sirmon, who died on August 5, 2010, "as a result of acute combined drug toxicity." (See, Ex. 2 at ¶¶ 3, 4, 7, WHEREFORE Clause). Plaintiff alleges this denial of benefits to be "wrongful, in violation of its contractual and good faith obligations to its insured." (Ex. 2 at ¶ 7). Plaintiff seeks the policy benefits, punitive damages, attorney fees, and other such relief as the Court and Jury so determine reasonable and proper. (Ex. 2 at WHEREFORE Clause).

3. As discussed below, there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00.

PARTIES AND DIVERSITY OF CITIZENSHIP

4. Plaintiff is a citizen of Haskell County, Oklahoma. (Ex. 2 at ¶ 1).

5. American Income is not an Oklahoma citizen but an Indiana corporation with its principal place of business in Waco, Texas. *Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995) ("[T]he existence of diversity must be affirmatively established on the face of either the petition or the removal notice.")

6. Accordingly, there exists complete diversity between Plaintiff and American Income pursuant to 28 U.S.C. § 1332.

AMOUNT IN CONTROVERSY

7. Plaintiff affirmatively alleges in her Petition she has suffered damages exceeding \$75,000.00. (Ex. 2 at WHEREFORE Clause).

8. Based upon the existence of complete diversity of citizenship and satisfaction of the amount-in-controversy requirement, this Court possesses original diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1441. Therefore, removal is proper.

REMOVAL PROCEDURE

9. American Income was served with Process in this case, through the Insurance Commissioner of the State of Oklahoma and pursuant to OKLA. STAT. tit. 36, § 621, on December 13, 2011. This constituted American Income's first receipt of any pleading in this matter. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty (30) days of first receipt by American Income of Plaintiff's Petition setting forth its claim for relief.

10. Other than the filing of Process and as of the date of filing of this Notice of Removal, the following activity has occurred in the District Court in this case:

- a. On October 31, 2011, Plaintiff filed the Petition, (Ex. 1), summons for which was issued back to Plaintiff's counsel on that date. An amended summons was issued back to Plaintiff's counsel on December 6, 2011.
- b. On December 9, 2011, the District Court entered a Summary Order, setting this case on the disposition docket and striking it from the February 2012 jury docket. A true and correct copy of this Order is attached hereto as Exhibit 4.

- c. On October January 3, 2012, counsel for American Income filed an Entry of Appearance and Reservation of Time. A true and correct copy of this filing is attached hereto as Exhibit 5. American Income has made no other filing or requested any relief in the state court proceeding.

11. American Income is the only named defendant in this action.

12. Pursuant to 28 U.S.C. § 1446(a) and LCvR 81.2, true and correct copies of all documents filed and/or served on either Plaintiff or American Income to date are attached hereto as the following exhibits:

Exhibit 1: Summons

Exhibit 2: Petition

Exhibit 3: Docket Sheet

Exhibit 4: District Court Summary Order

Exhibit 5: Entry of Appearance and Reservation of Time

13. A copy of this Notice of Removal is being filed with the Court Clerk for the District Court, together with Notice of Filing of Notice of Removal.

14. A copy of this Notice of Removal, together with a copy of the Notice of Filing of Notice of Removal, are being served on Plaintiff.

15. American Income reserves the right to amend or supplement this Notice of Removal.

Dated: January 11, 2011

Respectfully submitted,



John D. Russell, OBA No. 13343

FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.

321 South Boston, Suite 800

Tulsa, OK 74103-3318

Telephone: (918) 599-0621

Facsimile: (918) 583-9659

Email: jrussell@fellerssnider.com

**COUNSEL FOR DEFENDANT
AMERICAN INCOME LIFE
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I certify on this 11th day of January, 2012, a true and correct copy of this Notice of Removal was served upon the above-named Plaintiff, by mailing said copies to the following attorney record:

Weldon Stout
WRIGHT, STOUT & WILBURN, P.L.L.C.
300 West Broadway, P.O. Box 707
Muskogee, OK 74402

and further, on this date, a copy of said Notice of Removal was delivered for filing to:

Denise Sloan
HASKELL COUNTY COURT CLERK
202 E. Main Street
Stigler, Oklahoma 74462-3323


John D. Russell